

Coordinated Response - Legal Authority Action Plan

Date: November 30, 2004

Issue Group: Coordinated Response

Specific Activity Area being addressed by this Action Plan:

The Legal Authority action plan will improve clear-cut lines of authority in order to reduce challenges that may impede responses to an animal health emergency.

Safeguarding Review Recommendations Covered:

109. Include strategies to better understand and adhere to legal and regulatory requirements while also advancing the mission of public health; this in order not only to do the best job possible, but also to minimize the potential for legal challenges to response activities.

123. Define specific state and federal legal authorities for emergency actions, and lines of authority from the Secretary of Agriculture to the Regional Emergency Animal Disease Eradication Organization (READEO) directors.

134. Clarify authority regarding wildlife-related aspects of animal disease control and health emergency response.

148. Clearly define, establish, and communicate a comprehensive indemnity plan.

149. Clearly define and establish a seizure process, which includes the ability to limit legal challenges that could prolong destruction of animals for disease or welfare reasons and that could potentially contribute to the spread of disease.

152. Continue to develop guidelines and cultivate legal authority for humane euthanasia and carcass disposal in order to maintain biosecurity, and to prevent spread of infectious agents.

152. Develop guidelines that would allow for infected, high risk for infection, and vaccinated animals and their products to enter the human food system.

Issue Group Findings:

There is a perception that we do not have clear legal authority to perform many of the actions required by an emergency response. The Animal Health Protection Act has clarified overall legal authority, provided specific authorities to assist with addressing some issues, and resolved many other issues. However, there hasn't been sufficient activity to develop regulations to make use of these authorities for emergency management functions. In addition, the authorities provided by the Animal Health Protection Act have not been clearly communicated.

In some instances, it is a matter of formally documenting in the regulations the authority that Veterinary Services (VS) has or will take during an emergency. In other cases, work is needed to research and/or develop new authorities, procedures or options for emergency action and then develop implementing regulations.

In some situations, legal authority for delegation of authority does not exist. In addition, delegations of authority are sometimes not effectively implemented and vary state by state. A template does not exist for delegation of authority. The END After Action Report prepared by the Center for Naval Analyses (CNA) documents the issue for that particular incident. Decision makers need to be empowered with the appropriate authority to make decisions resulting in a timely response to an animal health incident. Not all managers and decision makers within VS clearly understand what legal authorities VS currently has regarding emergency operations and seizure of animals and animal products.

If a formal Declaration of Extraordinary Emergency is not declared, legal authority is further impeded. The Low Pathogenic Avian Influenza (LPAI) situation in VA is a good example of responding without an emergency declaration. VS needs to have sufficient legal and regulatory authority to effectively respond to an animal health event even if a formal emergency is not declared.

In addition to these general issues concerning authorities, some specific issues also need to be addressed:

Compensation - On May 1, 2002, VS published for comment a proposed change in the Code of Federal Regulations, 9 Part 53, section 53.2 to allow up to 100% payment for the purchase, destruction, disposition, and cleaning and disinfection costs associated with a Foot and Mouth Disease outbreak when cooperating with a state during the response. Currently, when VS and a state cooperate to control a contagious animal disease, VS has the regulatory authority to compensate up to 100% for High Pathogenic Avian Influenza (HPAI) and Exotic Newcastle Disease (END), but only up to 50% for most other diseases (see 9 CFR, Part 53, section 53.2 for details). VS identified and created a position to develop a standardized approach to determine fair market value for animals and commodities. This process has not yet been codified.

Disposal - Recent events suggest that massive destruction of livestock and disposal of carcasses and animal by-products will be challenged more often and more strongly because of animal welfare and environmental concerns. There is a recent updated VS guideline for carcass disposal. An interagency working group led by EPA is evaluating mass disposal options of biological material, including carcasses.

Non-disease events - In addition, in recent years VS has been involved in non-disease animal health events such as Hurricane Floyd, PCBs, and non-diseased animals impacted by movement restrictions within a quarantine zone. Authorities are not clear for responding to some of these situations.

Working with other agencies - With the signing of the national response plan, the new ESF 11, and response specific annexes, we now have the potential to get access to response assets for non-Stafford Act declarations. The signing is expected by December 31, 2004. This addresses some of the regulatory issues involved in working with other agencies.

Proposed Actions:

To address the needs identified above, the Issue Group is proposing the following three actions:

- 1) Identify where clear-cut legal authority and regulations are missing or require modification for seizure, indemnity, compensation, euthanasia, and carcass disposal. Include issues related to non-disease events, wildlife, federal/state interaction, and delegation of authority process. Write regulations and policies to address gaps.
- 2) Complete research to determine safety for human consumption of exposed animals or animal by-products. Determine legal authority to utilize carcasses for human use during outbreak responses.
- 3) Communicate and educate stakeholders, partners, and VS personnel down to the field level on the Animal Health Protection Act and related regulations concerning emergency actions related to animal disease situations.

Implementation Plan:

An initial implementation plan for each proposed action is provide below:

Action 1: Identify where clear-cut legal authority and regulations are missing or require medications and write regulations and policies to address gaps.

Tasks

Hire a resource or enter into a contract with an organization to determine gaps in current authorities that might limit VS' ability to respond to an emergency situation including:

- seizure ability
- indemnity/compensation (include indemnity for diseases other than FMD)
- euthanasia for welfare reasons
- wildlife
- federal and state interactions
- case definitions for infected and exposed animals for all diseases of concern
- disposal
- involvement in non-disease events
- authority with and without formal declarations of emergency

Develop and implement plans to fill identified gaps in authorities.

Develop a template for delegation of authority as recommended in the “Analysis of Response Operations to Eradicate END in 2002-2003: Response Management” END after action report (delegation of authority and decision making section).

Work with the American Veterinary Medical Association (AVMA), wildlife specialists, and others to define acceptable mass humane euthanasia policies. Consider animal suffering and personnel safety. Develop any necessary implementing regulations.

Continue to work with the Agricultural Research Service (ARS), Environmental Protection Agency (EPA), and others to identify disposal alternatives that meet environmental regulations. Identify disposal alternatives that would salvage protein. Evaluate risk factors associated with allowing animals and their by-products to go into the human food chain and then develop any necessary regulations to implement these findings.

Action 2: Complete research to determine safety for human consumption of exposed animals or animal by products

Tasks:

Establish a public relations team to communicate and disseminate information about the safety of our food supply if these products were salvaged for human consumption. This information would also need to be shared with the public to ensure confidence in the safety of our food supply.

Action 3: Communicate and educate stakeholders, partners and VS personnel down to the field level on the Animal Health Protection Act and related regulations concerning emergency actions related to animal disease situations.

Tasks:

Establish legal council to represent VS to address issues either by hiring a resource, contracting, or developing an agreement with OGC to provide an attorney specifically for animal health issues.

Conduct sessions with government lawyers and VS managers so that managers understand current legal authorities. Fully brief the Emergency Management Staff on the Animal Health Protection Act. Develop and implement a plan to brief the rest of VS and other stakeholders and partners on laws and regulations.

Develop and implement a plan for educating the public about the legal authorities and issues, both before and during emergencies.

Accountable Individual/Group

Associate Deputy Administrator for Emergency Management

Other Key Players

ARS, WS, CEAH, AVMA, EPA, international working groups, OGC, FSIS, FDA,

Resources Needed

Action 1: Identify where clear-cut legal authority and regulations are missing or require medications and write regulations and policies to address gaps

- Funding for research on disposal options and use of animals/animal by-products for human food; contract with a University - \$200,000
- Personnel or contract to perform the gap analysis; 1 staff year, GS-13 or contract with an appropriate entity, this would probably cost about \$150,000
- Travel expenses and supplies for meetings - \$50,000

Action 2: Complete research to determine safety for human consumption of exposed animals or animal by products

- Public relations firm to develop documents to address food safety issues if depopulated animals were to be salvaged for human consumption. Contract - \$200,000
- Travel expenses and supplies for meetings - \$50,000

Action 3: Communicate and educate stakeholders, partners and VS personnel down to the field level on the animal health protection act and related regulations concerning emergency actions related to animal disease situations.

- Personnel or contract to provide more concise and timely legal services focusing on animal health emergency management issues to Veterinary Services; develop agreement with OGC to provide an attorney specifically for animal health issues or hire a lawyer on EP staff to be the contact with OGC as needed – GS-14.
- Develop training material and on-line courses related to animal health emergency management legal issues by the Professional Development Staff or contracting with a training agency. (Focused at Responders and Public)
- Travel expenses and supplies for meetings mentioned above; \$50,000

Statutory/Regulatory Impacts

No changes to the basic laws are anticipated. However, implementation of this action plan will result in significant changes to regulations.

Political Sensitivities

Issues related to seizure, euthanasia, and disposal are politically sensitive because of animal welfare and environmental concerns. VS needs to think “outside the box” and consider alternatives to mass destruction and disposal and public and environmentally friendly alternatives to burning, burying, and incineration. The public may be more responsive to “destruction” if something constructive comes from it – safe food products.

Sequencing

Clear and sufficient legal authority is the basis for all emergency activities. Any issues related to authority need to be resolved before the next emergency. As we don't know when this will be, we need to proceed on this action plan quickly.

Partnering/Cooperation/Communication:

Clear and sufficient legal authority will facilitate interaction with all parties working on an emergency.

Expected Outcome and Performance Indicators:

VS will be able to respond to incidents more quickly and with minimal legal challenges.

Linkage to the VS Strategic Plan:

Objective 1.3: Improve readiness to respond to disease incursions.

Objective 3.1: Respond effectively to animal health events and continue to improve the national animal health emergency response capabilities.